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IN THE
Supreme Court of the United States

DALE R. DEROLPH, ET AL.,
Petitioners,

v.

THE STATE EX REL.
STATE OF OHIO,
Respondent.

On Petition for Writ of Certiorari to The Supreme Court of Ohio

BRIEF AMICUS CURIAE FOR THE COUNCIL OF THE GREAT CITY SCHOOLS IN SUPPORT OF PETITIONERS

PATRICIA A. BRANNAN*
HOGAN & HARTSON LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-8686
(202) 637-5910 (FAX)

*Counsel of Record

Counsel for Amicus Curiae

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11pp

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii-iii
STATEMENT OF INTEREST OF AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	3-6
THE PETITION RAISES AN ISSUE OF NATIONAL IMPORTANCE BECAUSE OTHER COURTS, LIKE THE SUPREME COURT OF OHIO, COULD DEPRIVE LITIGANTS IN SCHOOL FINANCE CASES OF EFFECTIVE REMEDIES	3-6
CONCLUSION	7

TABLE OF AUTHORITIES

Page

Cases:

Campaign for Fiscal Equity, Inc. v. New York, — N.E.2d —, No. 1/74, 2003 WL 21468502 (N.Y. June 26, 2003) 4

DeRolph v. State, 97 Ohio St. 3d 434, 780 N.E.2d 529 (2002) 5

Hancock v. Comm'r of Educ., Civil Action No. 2002-2978 (Mass. Super. Ct., Suffolk County) 4

Hoke County Bd. of Educ. v. North Carolina, No. 95 CVS 1158 (N.C. Super. Ct.), *discretionary review granted*, No. 530PA02 (N.C. Mar. 18, 2003) 4

In re Murchison, 349 U.S. 133 (1955) 5

McDuffy v. Sec'y of the Executive Office of Educ., 615 N.E.2d 516 (Mass. 1993) 4

Republican Party of Minnesota v. White, 536 U.S. 765 (2002) 5

San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) 3

Williams v. California, No. 312236 (Super. Ct. Cal. San Francisco County) 4

TABLE OF AUTHORITIES

Page

Other Authorities:

The Advocacy Center for Children's Educational Success with Standards (ACCESS), *Litigation, Finance Litigation, Overview* (Sept. 12, 2003), *at* http://www.accessednetwork.org..... 4

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BRIEF AMICUS CURIAE FOR THE COUNCIL OF THE GREAT CITY SCHOOLS IN SUPPORT OF PETITIONERS

INTEREST OF AMICUS CURIAE[1]

The Council of the Great City Schools ("Council") is the only national organization representing the needs of America's urban public schools. The Council is a coalition

[1] Counsel of record authored the brief in its entirety. No person or entity other than *amicus curiae* made a monetary contribution to the preparation or submission of the brief. Petitioners and Respondent have consented to the filing of this brief.

of 60 of the nation's largest urban public school systems, incorporated in 1961 for the purpose of improving the quality of urban education through research, legislation, technical assistance and advocacy. The school districts of Cleveland, Columbus, Dayton and Toledo comprise the Council's membership in Ohio. Other large school district Council members include Chicago, Los Angeles, Detroit, Miami-Dade, and Houston.

To assist its members and the larger education community in understanding issues and best practices in urban education today, the Council collects data on public education and publishes regular reports. The topics of recent Council reports have ranged from the progress of urban school districts in closing achievement gaps to efforts to recruit highly qualified teachers.

The Council has a strong interest in supporting efforts to adequately fund the education of millions of children enrolled in America's urban public schools. Toward that end, the Council has prepared major studies of school finance in four of its member districts, including an analysis for the Dayton Public Schools on how to improve student achievement and how to pay for the needed reforms.

The Petition for Writ of Certiorari sets forth the reasons why the Supreme Court of Ohio denied the Due Process of law protected by the Fourteenth Amendment to the Constitution when it foreclosed the successful plaintiffs in the Ohio school finance litigation from any remedy for the violations of the Ohio Constitution that the Supreme Court of Ohio had itself confirmed. The Council wishes to bring to the Court's attention facts concerning the importance of this case in a national perspective.

On one level, it may seem surprising that the Council is troubled by the Ohio decision and supports this Court's

review and reversal of the Supreme Court of Ohio's writ of prohibition. Council member districts no doubt are more often defendants than plaintiffs in state court litigation. That does not deter the Council from speaking out about the importance of the Supreme Court of Ohio's actions, however, because the rule of law is vital to the ability of governmental bodies, like the Council members, to predict their obligations and conform to what is expected. Public school children throughout the Nation are taught that the courts are available for the redress of grievances, that court orders and judgments must be obeyed, and that court orders will be enforced if necessary to exact compliance of a recalcitrant defendant. The Supreme Court of Ohio's writ of prohibition undermines that vital lesson.

SUMMARY OF THE ARGUMENT

The issue presented by the Petitioners is important not only for public school students in Ohio, but throughout the Nation. Significant school finance litigation brought under State constitutions is pending in many other states. The Due Process issue presented also is not limited to school finance cases. The troublesome appearance that the Supreme Court of Ohio reversed course because of a change in its composition adds to the importance of this case.

ARGUMENT

The Petition Raises an Issue of National Importance Because Other Courts, Like the Supreme Court of Ohio, Could Deprive Litigants in School Finance Cases of Effective Remedies

Since this Court's decision in *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1 (1973), holding that education is not a fundamental right for purposes of Equal Protection analysis under the Fourteenth Amendment,

schoolchildren and others vitally interested in fair and sufficient educational opportunity have looked to state law and state constitutions as a source of legal protection against inequity and inadequacy in the quality of public education. Lawsuits challenging state methods of funding public schools have been brought in 45 of the 50 states.[2] Since 1989, plaintiffs have prevailed in about two-thirds of the cases that have reached a final decision in the highest court of a state. The enforcement of judgments in favor of plaintiffs in these cases accordingly is a matter of national importance that extends well beyond the vital interests of the schoolchildren of Ohio. School finance cases are pending, or have reached the post-judgment remedy stage, in such large states as New York,[3] California,[4] North Carolina,[5] and Massachusetts.[6]

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2 The Advocacy Center for Children's Educational Success with Standards (ACCESS), *Litigation, Finance Litigation, Overview* (Sept. 12, 2003), *at* http://www.accessednetwork.org.

3 *Campaign for Fiscal Equity, Inc. v. New York,* — N.E.2d —, No. 1/74, 2003 WL 21468502 (N.Y. June 26, 2003) (ruling for plaintiffs).

4 *Williams v. California,* No. 312236 (Super. Ct. Cal. San Francisco County) (pending).

5 *Hoke County Bd. of Educ. v. North Carolina*, No. 95 CVS 1158 (N.C. Super. Ct.) (unpublished opinions issued Oct. 12, 2000, Oct. 26, 2000, Mar. 26, 2001, and Apr. 4, 2002), *discretionary review granted*, No. 530PA02 (N.C. Mar. 18, 2003) (oral argument heard Sept. 10, 2003).

6 *Hancock v. Comm'r of Educ.*, Civil Action No. 2002-2978 (Mass. Super. Ct., Suffolk County) (trial ongoing to determine whether the State of Massachusetts has satisfied its obligations to provide a constitutionally adequate education, as defined by the Massachusetts Supreme Judicial Court in *McDuffy v. Sec'y of the Executive Office of Educ.*, 615 N.E.2d 516 (Mass. 1993)).

The Due Process issue raised here – whether a state high court can deprive plaintiffs holding a valid judgment of any remedy – is not limited to school finance litigation. This situation can arise in any setting in which defendants are recalcitrant,[7] litigation is ongoing, and public controversy develops.

The Petition describes a "change . . . in the composition of the Supreme Court of Ohio" as the only change in the circumstances in the *DeRolph* case between *DeRolph v. State*, 97 Ohio St. 3d 434, 780 N.E.2d 529 (2002) ("*DeRolph IV*") on December 11, 2002, and the entry of the writ of prohibition on May 16, 2003. Pet. 12 n.8. The troublesome appearance that the Supreme Court of Ohio reversed course because of a change in its composition adds to the importance of this case. Petitioners cogently argue that the Due Process Clause defines boundaries on the ability of a state court simply to dispense with any remedy for an adjudicated violation of law. Pet. 16 – 23. An independent and impartial tribunal that bases decision on the facts and the law is the vital underpinning of notions of Due Process in litigation. *In re Murchison*, 349 U.S. 133, 136 (1955). Just two Terms ago, in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), the Court addressed the difficult tensions between the First Amendment protections of judicial candidates and the Due Process rights of litigants to fair and unbiased tribunals. *Republican Party* presented a question focused on the state judicial election process. The Petition here seeks the Court's guidance on an equally difficult and important issue on the other end of the process: What are the

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[7] The decision that Petitioners ask this Court to review describes over five years of effort by the Ohio Courts to have the legislature implement its mandate that public schools in Ohio be funded and maintained in full compliance with the Ohio Constitution. *See* Pet. App. 2a-6a.

boundaries of Due Process in cases of great public importance in which state court judges, without articulating a change in the facts or the law that would support a shift in the result, simply halt further proceedings after declaring that the plaintiffs are entitled to a remedy?

Although the circumstances in this case may seem extreme and unlikely to be repeated, the Council urges the Court to consider that this case is far from unique. Indeed, if this Court declines to review the actions of the Supreme Court of Ohio in this case, the Council is concerned that they will become the basis for a new set of litigation tactics that will deprive plaintiffs elsewhere of remedies to which they are entitled, including public school children throughout the Nation.

CONCLUSION

For all of these reasons, the Council of the Great City Schools urges the Court to grant the Petition for Writ of Certiorari.

Respectfully submitted,

PATRICIA A. BRANNAN*
HOGAN & HARTSON LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-8686
(202) 637-5910 (FAX)

*Counsel of Record

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